



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN M. BILL
ATTORNEY GENERAL

June 21, 1976

The Honorable Joseph D. Hawkins
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Open Records Decision No. 134

Re: State Fire Marshal's
report on fire.

Dear Commissioner Hawkins:

Pursuant to section 7 of article 6252-17a, V.T.C.S., the Open Records Act, you request our decision on whether an investigative report on a specific fire made by a Deputy State Fire Marshall for the State Fire Marshal's Fire Prevention Section is excepted from required public disclosure by section 3(a)(1) as information deemed confidential by law, or by section 3(a)(8), as a record of a law enforcement agency dealing with detection and investigation of crime, or by both of these exceptions.

The State Fire Marshal is appointed by the Chairman of the State Board of Insurance as a "state commissioned officer." He is "the chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson investigators to act under his supervision. . . ." Ins. Code art. 1.09A. Article 2.12(7) of the Code of Criminal Procedure provides that "each member of an arson investigating unit of a city, county or the state" is a peace officer.

It is the duty of the State Fire Marshal to investigate fires upon request of certain officials and interested parties. Ins. Code art. 5.43. This article provides in pertinent part:

The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. . . . All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private . . . and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public.

This language clearly permits testimony taken in an investigation to be withheld from the public, but it is not clear that it extends to the entire investigative report.

In Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. -- Houston [14th Dist.] 1975, writ ref'd n.r.e.) at 19 Tex. Sup. Ct. J. 300 (May 1, 1976), the court held that the press and public have a right to access to certain information maintained by law enforcement agencies relating to crime and criminal activities, and that this right extends affirmatively to certain basic factual information contained in a police offense report. We applied this principle to a fire investigation report by an arson investigation division of a city fire department in Open Records Decision No. 127 (1976), and held that certain basic factual information concerning the event was available from the investigation report.

Applying the same principle in this instance, we believe that portions of the State Fire Marshal's report reflecting basic factual information is required to be made public.

The report submitted with this request consists of a two-page form with certain information filled in, and a narrative summary of unsworn statements of witnesses, including the investigator.

The form shows the name of the investigator(s), the name of the person requesting the investigation, the date of such request, the probable cause of the fire, the owner, occupant, location of the loss or incident, date and time of incident, weather conditions, structural information, name and address of insuring company, amount of insurance involved, name of agent, adjuster, extent of damage, whether there were any fatalities or injuries involved, whether legal action was taken, and the status of the case. We believe that this information in the report is required to be made public.

However, those portions of the report calling for the investigator's opinion and conclusions concerning probable motive for the fire, the names of possible suspects, the names of witnesses, the previous fire loss record of the parties, and notes as to laboratory tests is the type of information which is intended to be excepted from required public disclosure by section 3(a)(8) of the Open Records Act.

As to the narrative report, we believe those portions on page 3 relating to the dates of the investigation, the construction and condition of the property damaged, and the information under the heading "occupancy" constitute basic factual information which is required to be disclosed. The other portions of the narrative report are excepted from required public disclosure by section 3(a)(8) as information in records of a law enforcement agency dealing with investigation and detection of crime, and by section 3(a)(1) as information deemed confidential by law, by virtue of article 5.43 of the Insurance Code.

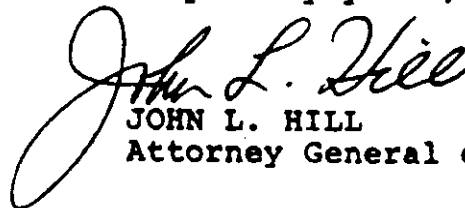
In regard to our decision that portions of the State Fire Marshal's reports are public, we regard as significant the provision in section 3 of article 1606c, V.T.C.S. (which article pertains to counties with a population of over 350,000 persons), which provides:

Sec. 3. The County Fire Marshal shall keep or cause to be kept in his office a record of all fires occurring within the county, outside of any incorporated city, town or village, together with all facts, statistics and circumstances, including the origin of the fire and the estimated amount of the loss, which may be determined by his investigation. Such record shall be kept in a legible and permanent form and be so preserved that the same may be at all times accessible and open for inspection.

Section 5 of this same article also provides that "the investigations and examinations may be conducted by said County Fire Marshal in private. . . ."

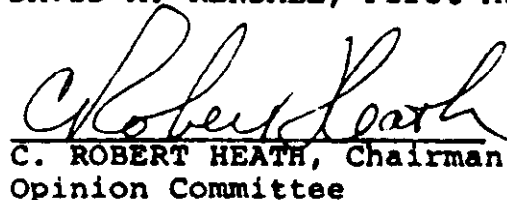
It is our decision that certain basic factual information contained in the State Fire Marshal's fire investigation reports is required to be made public, but that other portions of the report are excepted from required public disclosure by section 3(a)(1) by virtue of article 5.43 of the Insurance Code, and by section 3(a)(8) as a record of a law enforcement agency that deals with detection and investigation of crime.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant
C. ROBERT HEATH, Chairman
Opinion Committee

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